

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

**Plaintiff/
Moving Party**

-and-

**JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE**

**Defendants/
Responding Parties**

THE CORPORATION OF THE CITY OF WINDSOR

Intervener

**FACTUM OF THE INTERVENER,
THE CORPORATION OF THE CITY OF WINDSOR**

I. OVERVIEW

1. The Intervener, the Corporation of the City of Windsor (“Windsor” or the “City”) supports the Plaintiff’s motion for an interim injunction to restrain the Defendants from establishing a blockade, or in any way impeding access to, the Ambassador Bridge in Windsor.
2. The ongoing demonstrations and blockade have resulted in an effective shut-down of the Ambassador Bridge between the United States and Canada, a critical economic artery for the City. In addition to the significant economic harms established by the Plaintiff, the blockade is having a profound negative impact on Windsor and on the community, schools, residents, students and businesses in the vicinity of the blockades.

3. The City understands and respects the importance of democratic freedoms under the *Charter of Rights and Freedoms*, including the freedoms of expression, assembly, and association. The City does not seek to stifle the protesters' rights to protest or to express their deeply held views. However, the right to freedom of expression does not include violating the law or impairing private business.
4. The City supports this injunction to ensure that the Defendants' rights to protest not be exercised by unlawful means, or in such a way as to unduly harm the people and businesses who live and make a living in Windsor, and who rely on those who do.

II. FACTS

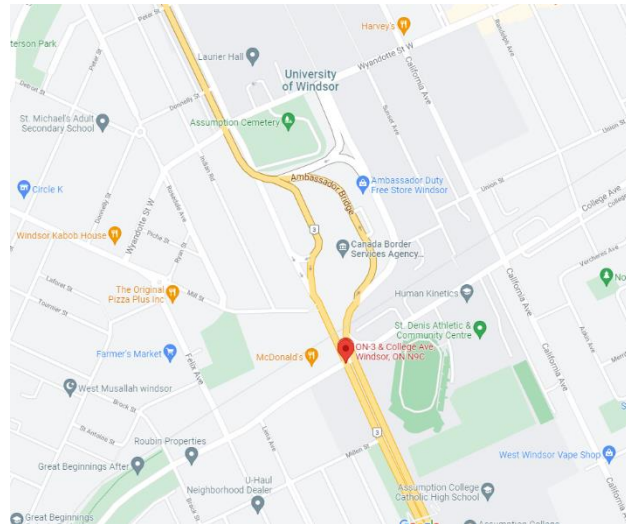
The City of Windsor and the Ambassador Bridge

5. The City of Windsor is a single-tier municipal government with an estimated population of 229,600. It is strategically located on the south shore of the Detroit River directly across from Detroit, Michigan in the United States.¹
6. Opened in 1929, the Ambassador Bridge (the “**Bridge**”) crosses the Detroit River, connecting the City to Detroit and the United States.² The Ambassador Bridge enters the City's northwestern corner and connects to Huron Church Road, a four-lane road that runs northwest to southeast, through the City. The intersection of Huron Church Road and College Avenue is the first major intersection that

¹ Affidavit of Jason Ward Reynar, sworn February 11, 2022, (“Supplementary Reynar Affidavit”).

² Supplementary Reynar Affidavit.

Bridge traffic encounters after passing through Canadian customs. This is the location of the main entrance to the Bridge:³



7. The Bridge is, by a significant margin, Canada's busiest commercial border crossing to the United States. It is a critical economic artery for the City. The City's businesses and, in particular, the automotive businesses central to the City's economy, require the free flow of goods across the Bridge to maintain production and ordinary employment levels. Many of Windsor's residents work, study or have family in Detroit. They require access to the Bridge to pursue their employment, studies, and to visit loved ones.⁴
8. Huron Church Road is not only a highway to the Bridge to Michigan. It is a main artery crucial to traffic flow in the City.⁵
9. The main entrance to the Ambassador Bridge is not located on vacant land or in an industrial area. Rather, the Bridge and Huron Church Road are surrounded by residential areas, schools, and businesses including hundreds of thousands of residents. In the immediate 2 km radius surrounding

³ Affidavit of Jason Ward Reynar, sworn February 10, 2022 ("Reynar Affidavit") at para. 4

⁴ Supplementary Reynar Affidavit.

⁵ Supplementary Reynar Affidavit.

the Bridge, there were approximately 24,925 residents as of 2016.⁶ The University of Windsor campus is adjacent to the Bridge. Assumption College Catholic High School is located less than 1km away from the bridge on Huron Church Road. Malborough Public School is less than 2 km away, on Tecumseh Rd. W. The Hotel Dieu Grace hospital is approximately 3 km away from the Bridge and Downtown Windsor less than 4 km away.⁷

10. From the Bridge Plaza south to the 401, residents of the western part of the City, including the Sandwich Town neighbourhood located to the southwest of the Bridge, must cross Huron Church Road to access the rest of the City.

The Protest's Impact on the City

11. Commencing on Monday February 7, 2022, a protest "in solidarity with similar protests in Ottawa" has obstructed the intersection of Huron Church Road and College Avenue.⁸ Demonstrators have parked multiple vehicles on City streets, blocking any traffic from crossing the Bridge *via* the primary entry and exit of the Bridge (the "Protest"). The blockade resulted in the complete closure of all Canada-bound traffic and severely limited US-bound traffic on to only the secondary Bridge entrance located on Wyandotte Street West.⁹
12. Since approximately February 9, 2022, Protesters have blocked the secondary access to the Bridge *via* Wyandotte street; an east-west street lined with small businesses and bordering residential neighbourhoods to the north and south. At this time, all access and exit to and from the Bridge has been obstructed.¹⁰

⁶ Supplementary Reynar Affidavit.

⁷ Supplementary Reynar Affidavit.

⁸ As reported by the media – see Toronto Star, *Protest continues to prevent Canada-bound traffic from crossing Ambassador Bridge*, February 9, 2022, Affidavit of Brayden Boughner, sworn February 11, 2022 ("Boughner Affidavit") at page 15 of the pdf.

⁹ Affidavit of Jason Bellaire sworn February 10, 2022 ("Bellaire Affidavit") at paras. 2 – 5

¹⁰ Bellaire Affidavit at paras. 6 & 7

13. The Protesters have no clearly discernable leader. They have refused to leave.¹¹
14. Windsor is Canada's automotive capital, and the automotive industry is the backbone of the City's economy, directly and indirectly employing a significant number of residents. Over 1,000 automotive manufacturers are located in Windsor-Essex, responsible for \$4.5 billion in annual GDP (30% of regional GDP), the largest sector by revenue in Windsor-Essex.¹² In December 2021, there were 36,800 people working in the manufacturing sector.¹³ In addition to employing many people, automotive companies provide important support to community charities and sponsor local events and activities. Many of Windsor's automotive businesses depend on their ability to ship and receive parts across the Bridge on a just-in-time basis.¹⁴
15. Disruption of the automotive industry represents a serious economic threat to the City and jeopardizes the employment of many. Businesses and people are already being impacted. Ford Canada has shut down operations at its Windsor Engine Plant due to blockage of the Bridge. Stellantis has reduced output and cut workers' shifts. The longer this Protest persists, the more serious the impacts will become.¹⁵
16. The Protest has disrupted the City's ability to deliver critical services and is upending the lives of its residents. The City has been forced to relocate Fire and Emergency Medical Service apparatus. The University of Windsor, a major institution that represents a key part of the City's diversifying downtown, is being impacted. The local Catholic Schools have closed today. Businesses near the Protest are losing customers because residents are afraid to enter the area. As noted above,

¹¹ Bellaire Affidavit at paras 8 & 9 and Affidavit of Brayden Boughner sworn February 10, 2022 ("Boughner Affidavit")

¹² Supplementary Reynar Affidavit.

¹³ Supplementary Reynar Affidavit.

¹⁴ Affidavit of Flavio Volpe sworn February 10, 2022 ("Volpe Affidavit") at paras. 15 – 17

¹⁵ Affidavit of Brian Kingston Sworn February 10, 2022 at paras 5-8.

blockading roads and impeding traffic also isolates residents in the Western portion of the City from the rest of their community.¹⁶

The Protest Violates City Bylaws

17. City Bylaw number 9148 regulates traffic within City limits. It prohibits people from obstructing roads with their vehicles and more generally prevents people from obstructing any highway:

7. (l) (a) No operator of a vehicle shall permit such vehicle to remain upon or be driven upon or along any street so as to block or obstruct traffic.

[...]

12. No person shall obstruct, encumber, injure or foul any highway or portion thereof.

18. The parking of multiple vehicles and the presence of many persons whose express intent is to block traffic is a clear violation of both of these provisions.

19. Vehicles left idling during the Protest are also in violation of City Bylaw 233-2001:

2. (1) . No person shall cause or permit a Motor Vehicle, a Commercial Motor Vehicle or a Boat to idle for more than three (3) continuous minutes (180 seconds);

III. ISSUES

20. The issues for the Court to consider are as set out in paragraph 2 of the Plaintiff's Factum.

IV. THE LAW

21. The Plaintiff set out the traditional test courts must apply when considering injunctions at paragraphs 4 to 7 of its Factum.¹⁷ Where an injunction is sought to enforce municipal by-laws or to respond to

¹⁶ Supplementary Reynar Affidavit.

¹⁷ Plaintiff's factum at paras. 4 – 7

civil disobedience or interference with property rights, the court may use a modified test where proof of irreparable harm and balance of convenience need to be considered. Under this modified test, a strong prima facie case showing that the defendants the clear breach of the by-law or interference with property rights is a key consideration and the other two criteria are of secondary, or no, importance.¹⁸

22. Injunctions enforcing property rights, public rights and public laws, including municipal by-laws, are readily granted. Civil disobedience including deliberate and repeated flouting of the law by the defendants also favor an injunction.¹⁹

23. The Plaintiff has raised serious issues to be tried. The defendants are breaching municipal by-laws, including but not limited to sections 7(1)(a) and 12 of City of Windsor By-Law 9148. The defendants are blocking and obstructing traffic and roadways, in contravention of the By-Law. Further, the Defendants' activity is interfering with the rights of the public to access the Ambassador Bridge.

24. The City submits that the Plaintiffs have demonstrated a strong *prima facie* case.²⁰ To the extent that they apply to the present situation, irreparable harm and balance of convenience also favor the relief sought.

Irreparable Harm

25. In *City of Brantford v. Montour et al*, Justice Arrell found irreparable harm where:

... the economy of this small city is at risk; the employment of members of the community are likewise at risk; the reputation of the City as a place to live, work and invest is at risk; the tax base is at risk; all as a result of the City being unable to regulate development, provide a conflict-free environment for investment, employment and the raising of families,

¹⁸ [Hamilton \(City\) v. Loucks](#), 2003 CanLII 64221 (Ont. S.C.J.) [*Hamilton*] at paras. 24 – 37 and [The Corporation of the Town of Caledon v. Darzi Holdings Ltd. et al](#), 2019 ONSC 5255 (Ont. S.C.J.) ("*Caledon v. Darzi*") at paras. 8 & 9

¹⁹ [Caledon v. Darzi](#), *Ibid.* at para. 8, [RJR-MacDonald Inc. v. Canada \(Attorney General\)](#), [1994] 1 S.C.R. 311 (S.C.C.) at para. 76, [Hamilton](#), *Ibid.* at paras. 25 – 27 and 30 – 32; and [Canadian National Railway Company v. Doe](#), 2020 ONSC 3998 [*CN v. Doe*] at paras. 9-10.

²⁰ [Hamilton](#) at paras. 40-43.

and the inability of the City to ensure to local residents and the investment community that the rule of law prevails.²¹

26. The City submits that the activities in question here present each of the risks which Justice Arrell found to be present in *Brantford*. The City, the residents, and the businesses of Windsor will suffer irreparable harm if the conduct of the Defendants is permitted to continue.

27. Where a government entity is seeking an injunction, irreparable harm is generally presumed because “... in general, government is presumed to act in the public interest.” Where a municipal authority seeks an injunction to enforce a bylaw which it establishes is being breached, the courts will refuse the application only in exceptional circumstances.²²

Balance of Convenience

28. The Plaintiff has established the harm it is suffering by the blockade of the Bridge. The blockage is harming the people who live, work, study, and do business in the City of Windsor. The balance of convenience favours granting the injunction.

29. The City understands and respects the importance of democratic freedoms under the *Charter of Rights and Freedoms*, including the freedoms of expression, assembly, and association. The City does not seek to stifle the protesters’ rights to protest or to express their deeply held views. However, the right to freedom of expression does not include violating the law or impairing private business.²³

30. In *Canadian National Railway Company v. Doe*, 2020 ONSC 3998, Justice Meyers considered an injunction to prevent unnamed protesters from trespassing on or near CN lands and blockading its trains. In granting the injunction, Justice Myers emphasized the rule of law:

²¹ [City of Brantford v. Montour et al](#), 2010 ONSC 6253 [*Brantford*] at para. 35.

²² [Newcastle Recycling Ltd. v. Clarington \(Municipality\)](#), 2005 CanLII 46384 (Ont. C.A.) at para. 32. See also [Township of King v. 2424155 Ontario Inc.](#), 2018 ONSC 1415 (Ont. S.C.J.) at paras. 50 – 53

²³ [CN v. Doe](#), *supra*, at paras. 8 – 10

Freedom of expression and association do not provide a legal basis to illegally deprive others of the enjoyment of their legal rights to use their land, operate their businesses, or travel. Neither does it guarantee the right to amplify one's voice by trammelling others' rights. The rule of law must be the dominant policy. If people do not respect the law then our rights become meaningless.²⁴

31. The protesters remain free to protest and get their message across, provided they comply with relevant laws. The City supports this injunction to ensure that the Defendants' rights to protest not be exercised by unlawful means, or in such a way as to unduly harm the people and businesses who live and make a living in Windsor, and who rely on those who do.

The Injunction May Bind Unnamed Parties with Notice of the Order

32. Injunctions may bind non-parties, including unnamed individuals and persons unknown.²⁵ In circumstances such as this, where it is not possible to readily identify all of the persons who may be affected by the injunction, an injunction may be binding on all persons with notice of the order.²⁶

33. Injunctive relief ought to be issued in this case against the named defendants and against "John Doe", representing unnamed individuals, persons unknown and all persons having notice of the order.²⁷ This would be consistent with the approach taken by this Honourable Court in its Order issued by the Honourable Mr. Justice McLean on February 7, 2022, in Court File No: CV-22-00088514-00CP respecting persons participating in the Freedom Convoy Protest in Ottawa, Ontario.²⁸

²⁴ [*Ibid.*](#) at para. 10, citing from his reasons in another blockade protest on CN tracks, in *Canadian National Railway Company v Doe*, (unreported, Court File No. CV-20-00635938)

²⁵ [*MacMillan Bloedel Ltd. v. Simpson*](#), 1996 CanLII 165 (SCC), [1996] 2 SCR 1048 [*MacMillan*] at para. 37

²⁶ [*MacMillan*](#), *supra*, at para. 37; see also [*CN v. Doe*](#), *supra*, at paras 1, 12; [*Canadian National Railway Company v. Doe*](#), 2020 ONSC 4152 at paras 3, 15.

²⁷ [*MacMillan*](#), *supra*, at paras. 20, 37.

²⁸ See Order of McLean J. dated February 7, 2022 in *Li v. Barber et al*, Ottawa Court File No. CV-22-00088514-00CP [unreported]

IV. RELIEF SOUGHT

34. The City supports the Plaintiffs' request for relief sought.

February 11, 2022

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